



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 11-12659

**Appearances**

For Government: Greg Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

03/13/2013

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated security concerns regarding foreign influence. Eligibility for access to classified information is denied.

**Statement of Case**

On August 21, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance. DOD recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended, DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive), and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on September 5, 2012, and requested a hearing. The case was assigned to me on November 26, 2012. The case was scheduled for hearing on December 4, 2012. A hearing was held as scheduled. At hearing, the Government's case consisted of three exhibits (GEs 1-3); Applicant relied on one witness (himself) and no exhibits (AEs). The transcript (Tr.) was received December 12, 2012.

Besides its two exhibits, the Government requested administrative notice of facts covered by 23 source documents. Included are the following documents: *Background Note: Iran*, U.S. Department of State (March 2008) with *U.S. Relations with Iran*, U.S. Department of State Fact Sheet (August 2012); *Worldwide Threat Assessment of the Intelligence Community for the Senate Select Committee on Intelligence*, Director of National Intelligence (January 2012); *State Sponsors of Terrorism*, U.S. Department of State (July 2012); *Country Reports on Terrorism, Chapter 3--State Sponsors of Terrorism Overview*, U.S. Department of State (August 2011); *Secretary of State Press Statement-United State Condemns Iran's Announcement on Qom*, U.S. Department of State (January 2012); and *2011 Human Rights Report: Iran, Country Reports on Human Rights Practices*, U.S. Department of State (July 2012).

Other documents covered by the Government's administrative notice request are comprised of the following: Report to Congress on Foreign Economic Collection and Industrial Espionage--2009-2011, Office of the National Counterintelligence Executive (October 2011); *Pennsylvania Company Fined for Export Violations Involving Iran, UAE and Syria* (December 2007); *Iranian Pleads Guilty to Attempted Exportation of Arms and Money Laundering*, U.S. Attorney's Office (April 2005); *Singapore Businessman Convicted of Secretly Diverting U.S. Military and Civilian Aircraft Parts to the Islamic Republic of Iran*, U.S. Department of Commerce (May 2006); *Arms Dealer Pleads Guilty to Conspiracy to Supply U.S. Fighter Jet Engines*, U.S. Department of Justice (November 2009); *U.K. Firm Fined \$2 Million After Pleading Guilty to Illegally Exporting Boeing 747 Aircraft to Iran*, U.S. Department of Justice (May 2010); *Iranian National Pleads Guilty to Attempting to Export Munitions from the United States*, U.S. Department of Justice (June 2010); *New York Man Sentenced for Illegally Exporting Stolen NBC Night Vision Lenses for Delivery to Iran*, U.S. Department of Commerce (August 2005); *Iranian National Charged with Illegally Exporting Specialized Metals from the United States to Iran*, U.S. Department of Justice (February 2011); *Treasury Designates Multi-Million Dollar Procurement Network for Directly Supporting Iran's Missile Program*, U.S. Department of Treasury (February 2011); *Iranian National Sentenced to 51 Months in Prison for Plot to Illegally Export Missile Components and Radio Test Sets to Iran*, U.S. Department of Justice (August 2011); and *Five Individuals Indicted in a Fraud Conspiracy Involving Exports to Iran of U.S. Components Later Found in Bombs in Iraq*, U.S. Department of Justice (October 2011).

The remaining documents covered by the Government's administrative notice request are comprised of the following: *Country Specific Information, Iran*, U.S. Department of State (November 2011); *Travel Warning, Iran*, U.S. Department of State (April 2012); *Joint U.S.-Canadian Statement: Secretary Clinton and Foreign Minister Canon Express Concern over Continued Detention of U.S. and Canadian Nationals in Iran*, U.S. Department of State (September 2009); *Robert Levinson's 1,000<sup>th</sup> Day Missing*, U.S. Department of State (December 2009); *Wave of Arrests, Harassment, and Death Sentences in Iran*, U.S. Department of State (January 2012).

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292, at 4 n.1 (App. Bd. April 12, 2007). Administrative notice is appropriate for noticing facts or government reports that are well known. See *Stein*, Administrative Law, Sec. 25.01 (Bender & Co. 2006).

For good cause shown, administrative notice was granted with respect to the above-identified background reports containing facts pertaining to the geopolitical situation in Iran. Administrative notice was extended to the documents themselves, consistent with the provisions of Rule 201 of Fed. R. Evid. This notice did not foreclose Applicant from challenging the accuracy and reliability of the information contained in the reports addressing Iran's current state.

### **Procedural Issues and Rulings**

Before the close of the hearing, Department Counsel requested leave to supplement the record with a full record of documents covered by its request for administrative notice. For good cause shown, Department Counsel was granted seven days to supplement the record. Within the time permitted, Department Counsel furnished the public documents covered by its administrative notice request.

Prior to the close of the hearing, Applicant requested leave to supplement the record with updated information about his wife's family members and changes (if any) to his summary of interview previously conducted by an investigator from the Office of Personnel Management (OPM) For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded three days to respond. Within the time permitted, Applicant supplemented the record with additional background information about his wife's parents and siblings and corrections to his OPM interview summary. I admitted Applicant's submissions as AEs A and B.

### **Summary of Pleadings**

Under Guideline B, Applicant allegedly has a father-in-law and mother-in-law who are citizens and residents of Iran. In his response to the SOR, Applicant admitted each of the allegations. He claimed his wife talks with her mother regularly about family issues. He claimed he rarely talks with his mother-in-law and never talks with his father-in-law due to language barriers. Applicant explained his mother-in-law is of German descent and retained her German citizenship; his father-in-law is a retired university

professor with no affiliation with the Iranian government. Applicant claimed he has never seen his father-in-law, and has not seen his mother-in-law since her last visit to the United States in 1997. Applicant claimed, too, that he has never been asked about his work by any of his wife's family members. He claimed he has held a security clearance continuously since 1985 and would inform his employer's security department first should any security problems arise.

### **Findings of Fact**

Applicant is a 57-year-old engineer for a defense contractor who seeks to retain his security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Applicant's background**

Applicant earned a bachelor's degree from an accredited university in May 1982. (GE 1) He has no military experience and has held a security clearance continuously for the most part since 1985 (shortly after he went to work for a predecessor of his current employer). (GE 1; Tr. 28-32) He married his wife in February 1984 and has one child from this marriage. (GE 1 and AE B; Tr. 59)

Applicant's wife immigrated to the United States in 1977 and became a naturalized U.S. citizen in 1988. (Tr. 34) She retains her Iranian citizenship, which she acquired through her father, and has an expired Iranian passport. (AE B; Tr. 35, 56) Applicant's wife is a homemaker and occasional substitute teacher. (Tr. 58)

Applicant's mother-in-law and father-in-law are both Iranian citizens and residents. (AEs A and B) His mother-in-law was born and raised in Germany and met and married his father-in-law in Germany in 1969. She is a homemaker and has never worked outside of the home. (GE 2 and AEs A and B; Tr. 51-53) His mother-in-law later relocated with his father-in-law to Iran where she has resided continuously. (AEs A and B; Tr. 53) She holds both German and Iranian passports. (AEs A and B; Tr. 53-57)

Applicant's father-in-law earned a PhD in soil science from a German university and briefly served as a professor in Germany before moving back to Iran to accept a teaching position from an Iranian university. (AE A) His father-in-law is currently retired from his teaching position and has a government pension. (AE A) However, he still maintains his university ties. He does some faculty advising and contributes some non-government research. (Tr. 39-41) He owns two apartments near the university.

Applicant has several brother-in-laws who retain their Iranian citizenship. His youngest brother-in-law (BN) was born in Iran in 1970 and moved to Germany in 1993. (AE B) He has resided in Germany continuously ever since he arrived and holds both Iranian and German citizenship. (AEs A and B; Tr.44-45) He has a valid German passport, but never renewed his Iranian passport. (AEs A and B) When this brother-in-

law needed financial assistance, his in-laws provided help. And periodically, Applicant and his wife provide financial assistance to BN. (Tr. 43, 46)

In 2011, Applicant's wife's parents wired funds in U.S. denominated currency (\$69,000 to Applicant's wife and \$56,000 to her second-oldest brother, BH) to invest on the parents' behalf. (AE B; tr. 47-48) After considerable thought, Applicant's wife and her brother settled on the purchase of a rental town house near their home. (AE B; Tr. 47-48) With the remittance proceeds, Applicant and his wife purchased a rental home for \$118,000. (AEs A and B; Tr. 47-55) From the rental income from the investment property, Applicant and his wife kept some for operating expenses and remitted the rest to the younger brother in Germany to help him meet his financial needs. (AE B 43, 46) Based on their identified income sources, the \$125,000 remitted to Applicant's wife and BH presumably represent much of their parents' life's savings. Because of monetary pressures brought to bear on Iran's financial institutions under the weight of U.S.-led sanctions, conversion rates for dollars presumably were highly unfavorable in Iran in 2011. Whether the parents made their remittances with the intention of pursuing residence status in the United States is unknown from the evidence in the record.

Applicant and his wife provide no financial assistance to Applicant's wife's parents or siblings. (Tr. 42, 48) And neither of the parents provide any financial support to Applicant and his wife. (Tr. 49) Should Applicant ever be contacted by Iranian authorities, he assures he would report the contact to his employer's security department.

Applicant's wife communicates daily with her mother in Iran, but rarely talks to her father. (Tr. 50) By contrast, Applicant speaks to his mother-in-law occasionally and never to his father-in-law due to language barriers. (Tr. 27, 49) Since Applicant's father-in-law returned to Iran in 1978, Applicant's father-in-law has not visited the United states. (Tr. 36) While Applicant's wife visited her parents once in Germany, she has never traveled to Iran to see them. (Tr. 51)

Besides her younger brother, Applicant's wife has two older brothers of Iranian descent. Each of these older brothers holds Iranian citizenship in addition to the citizenship each holds as a naturalized U.S. citizens. None of her brothers hold valid Iranian passports. (AEs A and B) Applicant's oldest brother (BJ) was born in Iran in 1959 and immigrated to the United States in 1977 to attend an accredited university. This brother earned advance degrees in electrical engineering and mathematics and currently teaches engineering classes at a recognized state university. (AE A and B) BJ became a naturalized U.S. citizen in 2011 and has not renewed his Iranian passport. (AEs A and B)

Applicant's wife's second brother-in-law (BH) was born in 1969 and immigrated to the United States in 1977 to attend a state university. (AE B) He earned a PhD in civil engineering and received U.S. permanent residency in 2005. BH is currently employed by a state council of governments as a flight engineer and is an adjunct professor for a local university. BH retains his Iranian and German citizenship, and holds a valid

German passport. (AEs A and B; Tr. 51, 57) However, BH has not renewed his Iranian passport. (AEs A and B)

Neither Applicant's wife nor any of her brothers have taken any steps to renounce their Iranian citizenship. (AEs A and B) None of Applicant's three brother-in-laws would consider renouncing their Iranian citizenship. To do so could endanger their parents who still reside in Iran. (AEs A and B) Neither of Applicant's in-laws have any connections with the Iranian government to Applicant's knowledge. Whether either of his in-laws have voted in Iranian elections is unknown to him. (Tr. 58)

### **Political and economic background of Iran**

According to official U.S. State Department documents, Iran is an Islamic republic that is constitutionally constructed and has a head of state, an elected president and counsel of ministers, a legislative body composed of a 290-member Islamic consultative assembly, and a judiciary (*see Background Note on Iran, supra*, at 6-7). Throughout its long history, Iran has been ruled by numerous dynasties. Following a nationalist uprising against the Shah in 1905, Iran enacted a limited constitution in 1906. (*id.*, at 4)

Two years later, oil was discovered, and Iran began its steady ascension to a modern, secularized political system. Under the reign of Reza Shah Pahlavi (an Iranian officer, who seized control of the government in 1921), Iran enacted policies of modernization and secularization, established a central government, and reasserted its authority over the tribes and provinces. (*id.*, at 4-5) During the Allied occupation of western Iran in 1941, the Shah was forced to abdicate and was succeeded by his son, Mohammad Reza Pahlavi. (*id.*)

Domestic turmoil swept Iran in 1978 as the result of heated religious and political opposition to the Shah's rule and political/economic programs (especially the Shah's internal security and intelligence service). And in February 1979, exiled religious leader Ayatollah Ruhollah Khomeini returned from France to direct a revolution resulting in a new, theocratic republic guided by Islamic principles. (*Background Note on Iran, supra*, at 5) Iran's 1979 constitution allocates the duties of the chosen religious leaders and governing bodies in such a way that their duties often overlap. Legislative issues on which the Majles (Iran's legislative governing body) and the Council of Guardians (making up Iran's religious leadership) fail to agree are resolved by the Council of Expediency (a body created by Ayatollah Khomeini in 1988). Following the Ayatollah's death in June 1989, the Assembly of Experts (an elected body of senior clerics) chose the outgoing president of the republic (Ali Khamenei) to be the Ayatollah's successor as national religious leader. (*id.*)

Iran's post-revolution has been marked by an eight-year war with Iraq, internal political struggles and unrest, and economic disorder. Its post-revolution regime has been associated with human rights violations and political turmoil, including the seizure of the U.S. Embassy in November 1979 by Iranian militants and the hostage taking of 52

Americans (see *Background Note on Iran, supra*, at 5). Succeeding power struggles have severely eroded the center and left of Iran's political institutions, leaving only the clergy. Both human rights and state sponsored terrorism remain serious problems in Iran. See *Administrative Notice, supra*, at 2-3.

Long estranged from the West, Khomeini's regime charted regional goals that curtail the presence of the United States and other outside powers in the region. Iran has been designated a state sponsor of terrorism since January 1984 (*Administrative Notice, supra*, at 2; *State Sponsors of Terrorism, supra*), and remains the most active state sponsor of terrorism. (*Country Reports on Terrorism, Chapter 3--State Sponsors of Terrorism Overview, supra*, at 2) In 2010, Iran's financial, material, and logistic support for terrorist and militant groups throughout the Middle East and Central Asia had a direct impact on international efforts to promote peace, threatened economic stability in the Gulf, and undermined the growth of democracy. Iran provided weapons, training, and funding to Hamas and other Palestinian terrorist groups, including the Palestine Islamic Jihad (PIJ) and the Popular Front for the Liberation of Palestine General Command (PFLP-GC). (*Country Reports on Terrorism, Chapter 3--State Sponsors of Terrorism Overview, id.*, at 2)

In 2010, Iranian authorities continued to provide lethal support, including weapons, training, funding, and guidance, to Iraq Shia militant groups that target U.S. and Iraqi forces. (*id.*) Also, in 2010, Iran remained unwilling to bring to justice senior al-Qaeda members it continued to detain. (*id.*, at 3)

In January 2012, the Director of National Intelligence (DNI) expressed concern that the 2011 plot to assassinate the Saudi Ambassador to the United States demonstrates that some Iranian officials are now more willing to initiate attacks on U.S. soil in response to real or perceived U.S. threats to their regime. (*Worldwide Threat Assessment of the Intelligence Community for the Senate Select Committee on Intelligence, supra*, at 5) In the same worldwide threat assessment, the DNI assessed that the most menacing foreign intelligence threats in the next two to three years will involve espionage by China, Russia, and Iran. (*id.*) The DNI's threat assessment included a geopolitical projection that Iran's intelligence operations against the United States, including cyber capabilities, have dramatically increased in recent years in both depth and complexity. (*id.*, at 8)

Iran's nuclear program remains a pressing U.S. concern. Since September 2002, the International Atomic Energy Agency (IAEA) has actively worked to clarify the nature of Iran's nuclear program, which has been repeatedly out of compliance with its international obligations. (*Background Note: Iran, supra*, at 9-10) The IAEA's efforts have included substantial economic incentives packages and assistance in cooperation with key interested countries comprising the P5+1 group.

To date, Iran has not responded positively to any of the offered incentives packages. (*id.*, at 9) Binding UNSC resolutions calling on Iran to halt its proliferation-

sensitive nuclear activities and comply with the non-proliferation treaty (NPT) have been ignored by Iran. (*id.*, at 10)

International concerns regarding the nature of Iran's nuclear program were deepened and reaffirmed by a November 2011 IAEA report that concluded that Iran has carried out activities "relevant to the development of a nuclear explosives device," and "that prior to the end of 2003, these activities took place under a structured program, and that some activities may still be ongoing." (*Background Note: Iran, supra*, at 10) In January 2012, the United States condemned the Iranian government's decision to begin enriched operations at its QOM facility. (*Administrative Notice, supra*, at 3; *Secretary of State Press Statement-United State Condemns Iran's Announcement on Qom, supra*) These ongoing operations bring Iran a significant step closer to having the capability to produce weapons-grade highly enriched uranium. (*id.*)

Although Iran is a constitutional republic in structure, its current supreme leader, Ayatollah Khamenei, control's Iran's security forces, the judiciary, and other key institutions. (*2011 Human Rights Report: Iran, supra*, at 1) Even though Iran's constitution prohibits arbitrary arrest and detention, these practices remain common. Its regular and paramilitary security forces that share responsibility with Iranian police for law enforcement and maintaining order are reported to have committed numerous, serious human rights abuses in recent years (*id.*, at 2-50)

State Department country reports cite significant restrictions on the right of citizens to change their government, summary executions (minors included), disappearances, torture and severe punishments (such as amputations and flogging), violence by vigilante groups with ties to the government, poor prison conditions, arbitrary arrest and detention (including prolonged solitary confinement), lack of judicial independence and fair public trials, political prisoners and detainees, excessive government violence in Kurdish areas and unknown groups in Arab regions of the country, severe restrictions on civil liberties and freedom of religion, official corruption, government transparency deficiencies, legal and societal discrimination against women, ethnic and religious minorities, trafficking in persons, incitement of anti-Semitism, severe restriction of workers' rights, and child labor. (*Administrative Notice, supra*, at 2-3 and *2011 Human Rights Report: Iran, supra*, at 1-50) And in criminal custody cases, security forces responsible for arrest and detention often do not inform family members of a prisoner's welfare and locations, and often deny visits by family members and counsel. (*id.*)

Addressing reports of human rights violations in Iran, the UN General Assembly adopted a human rights resolution on Iran in December 2005 that expressed serious concern at the continuing use of torture in Iran, trafficking in persons, inhuman and degrading treatment or punishment, such as floggings and amputations, as well as public executions (*2011 Human Rights Report: Iran, supra*, at 58) This resolution followed nine consecutive years of similar UNGA resolutions of expressed concern over Iran's dismal human rights record.



Export licensing abuses by Iranian agents pose additional security concerns for U.S. security interests associated with Iran. (*Administrative Notice, supra*, at 4) In October 2011, the Office of National Counterintelligence Executive reported losses of sensitive economic information and technologies to foreign entities represent significant costs to U.S. national security. (*Report to Congress on Foreign Economic Collection and Industrial Espionage—2009-2011, supra* at 3) Illicit transfer of technology with military applications to hostile states like Iran and North Korea risk endangerment of U.S. lives and allied military personnel. (*id.*)

Numerous cases have been cited covering the illegal export, or attempted illegal exports, of U.S. restricted, dual use technology to Iran. Case specific examples include the following: safety and inspection items (*Pennsylvania Company Fined for Export Violations Involving Iran, UAE and Syria, supra*); aircraft parts and fighter jet components (*Singapore Businessman Convicted of Secretly Diverting U.S. Military and Civilian Aircraft Parts to the Islamic Republic of Iran, supra*; *Arms Dealer Pleads Guilty to Conspiracy to Supply U.S. Fighter Jet Engines, supra*; *U.K. Firm Fined \$2 Million After Pleading Guilty to Illegally Exporting Boeing 747 Aircraft to Iran, supra*); and night vision equipment. (*New York Man Sentenced for Illegally Exporting Stolen NBC Night Vision Lenses for Delivery to Iran, supra*)

Other case examples include specialized metals (*Iranian National Charged with Illegally Exporting Specialized Metals from the United States to Iran, supra*); missile components and radio test sets (*Iranian National Sentenced to 51 Months in Prison for Plot to Illegally Export Missile Components and Radio Test Sets to Iran, supra*) and radio frequency modules found in bombs in Iraq (*Iranian National Sentenced to 51 Months in Prison for Plot to Illegally Export Missile Components and Radio Test Sets to Iran, supra*).

Dual citizens residing or visiting in Iran are subject to all Iranian laws affecting U.S. citizens, as well as those applicable to persons of Iranian nationality that impose special obligations on them. (*Travel Warning, Iran, supra*, at 1-2; *Country Specific Information: Iran, supra*, at 3). Dual nationals are subject to Iran's military service requirements and can be conscripted into service while on Iranian soil. Reports indicate Iranian security personnel may at times place foreign visitors under surveillance, monitor their hotel, rooms, telephone, and fax machines, search their personal possessions, and even arrest or detain Iranian-Americans suspected of "acting against national security." (*Travel Warning: Iran, id*; *Country Specific Information, Iran, id.*)

Because the Iranian government does not recognize dual nationality and will treat U.S.-Iranian dual nationals as Iranian citizens, regardless of their U.S. naturalization status, dual nationals who enter Iran only on a U.S. passport risk detention absent persuasive proof of their formal renunciation or loss of their Iranian citizenship (*Country Specific Information, Iran, supra*, at 3) State Department travel warnings urge U.S. citizens to carefully consider the risks of travel to Iran (*Travel Warning, supra*, at 1), a country with which the United States does not have diplomatic or consular relations. (*Administrative Notice, supra*, at 4; *Country Specific Information, Iran, supra*, at 3) Citing

Iran's non-recognition of dual citizenship and general declination to permit the Swiss to provide protective services for U.S. citizens who are also Iranian nationals, Americans who travel to Iran are strongly encouraged to register through the State Department's travel registration website. (*Travel Warning, Iran, 2008, id.*, at 2)

Currency remittance presents another troubling problem in U.S.-Iranian relations. U.S. economic sanctions ban most economic activity between U.S. persons and Iran. (*Country Specific Information, Iran, supra*, at 8-9) Generally, unless licensed by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), goods, technology, or services may not be exported, re-exported, sold or supplied, directly or indirectly, from the United States, or by a U.S. person (wherever located) to Iran or the Government of Iran. (*id.*, at 9) With limited exceptions, goods or services of Iranian origin may not be imported into the United States, either directly or indirectly through third countries. (*id.*)

Likewise, Iranian security concerns have restricted money transfers in general out of Iran. (*Country Specific Information, Iran, supra*, at 9) For residents and non-residents alike, external remittances of local currency (Iran Rial-IRR) are generally limited to key threshold amounts of IRR 500,000 and of foreign currencies up to 5,000 in U.S. dollars. Larger remittances normally require a bank statement or a transfer certificate issued through Iran's central bank. In general, all foreign exchange transactions must take place through Iran's banking system.

Family remittances from Iran that are transmitted through informal non-banking channels (sometimes characterized as Hawala networks) are inherently risky. This method of remittance is challenging and can expose the remitting person to government monitoring and penalties if detected.

### **Endorsements**

Applicant did not provide endorsements or personnel evaluations. Whole-person assessments are necessarily limited to Applicant's security application, his OPM interviews, his testimony, and his presented exhibits.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, revoked, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a

decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs. AG ¶ 2(a) is intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

### **Foreign Influence**

*The Concern:* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism. (AGs, ¶ 6)

### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

A U.S. citizen by birth, Applicant married an Iranian national in 1984 who has parents who are citizens and residents of Iran. The Government urges security concerns over risks associated with Applicant's wife (a naturalized U.S. citizen who retains dual citizenship with Iran and holds an expired Iranian passport) and her parents, who are citizens of Iran and reside there. Applicant's in-laws have strong roots in Iran. More specific concerns are directed to Applicant's wife's daily contacts with her parents in Iran and her parents' remittance of substantial funds in U.S. currency to her brother and herself for investment in the United States on their behalf. Although these more specific concerns were not raised in the SOR, they are covered generally by the broad references to the parents' citizenship and residence status in Iran.

In the past, the Appeal Board has not required the charging of every fact and detail raised in a hearing so long as the SOR placed the applicant on notice of the subject matter of security concern. See ISCR Case No. 01-26479 at 2 (Sept. 2003); ISCR Case No. 00-0423 at 3 (June 2001) (citing Supreme Court decisions). Like the Federal Rules of Civil Procedure, DOHA procedures are governed by notice pleading. The information pertaining to Applicant's wife's contacts with her parents and her parent's investment decisions was voluntarily furnished by Applicant in his OPM interview and hearing, and was not objected to when raised by Department Counsel. Notice requirements were satisfied in connection with all of the supplied evidentiary details of Applicant's wife's relationships with her parents.

Iran is a country historically known to practice terrorism, and to exercise repression and human rights abuses against its own citizens, as well as dual citizens who visit the country. Because Iranian government military and intelligence authorities have a history of violating Iranian and international laws and diplomatic protocols, they are more likely to use improper and/or illegal means to obtain classified information in Applicant's possession or control through his wife and her parents.

By virtue of the Iranian citizenship and residency status of Applicant's in-laws in Iran and the regular contact Applicant's wife has with her parents, her relationships with her parents present potential heightened security risks covered by disqualifying condition (DC) 7(a), "contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion," of the AGs for foreign influence. Both Applicant's father-in-law and his mother-in-law retain links and contacts that could invite oversight by Iranian government officials. With Iran's reported history of monitoring email, phone calls, and other communications, the risks of disclosure of personal information about Applicant's employment cannot be

safely discounted. Whether any personal information about Applicant might have been passed on to Applicant's in-laws by his wife's brothers is unknown but cannot be safely discounted either.

Although none of Applicant's in-laws have any identified Iranian prior military or government service, his father-in-law retains significant links to the Iranian university system and is presumably well-known in Iran's university community. Both of his in-laws remain vulnerable to potential compromise and coercion for so long as they reside in Iran. Their monetary remittances in 2011 to Applicant's wife and her brother were considerable and were made with the understanding the funds would be invested on their behalf and returned to them upon request. Risks of monitoring large monetary remittances from Iran are heightened for so long as sanctions remain in place.

Iran's currency export regulations limit the export of local currency (Iran Rial-IRR) up to IRR 500,000 for residents and non-residents of Iran and up to 5,000 in U.S. EUR/USD currency. (*Key Features of the Iran Exchange System*, FarsiNet (2006)) Persons seeking to remit larger amounts require approval by Iran's central bank and must be routed through Iran's banking system. Iran can be expected to aggressively monitor remittances in U.S. dollars for the foreseeable future in the face of the continuing depreciation of its official currency (the rial) *vis-a-vis* the U.S. dollar triggered by U.S.-led sanctions.

Because of the investment nature of the parents' remittances, should they ever request a return of their investment, Applicant's wife and brother could potentially encounter restrictive U.S. remittance regulations. For in the United States, U.S. remittances to Iran in excess of \$10,000 in monetary instruments require the filing of a report with U.S. Customs. Failure to file the report could subject the offender to forfeiture and result in civil and criminal penalties. While money transfers made on a non-commercial family basis may be accepted under this regulatory regime, they require the avoidance of services of an Iranian financial institution to process the remittance. (31 C.F.R. § 560.616(a)(3)) *See United States v. Banki*, Docket No. 10-3381 (2d Cir. October 2011).

Whether Applicant's in-laws complied with Iran's local remittance regulations or utilized informal Hawala networks to circumvent Iran's restrictive remittance regulations is unknown. Depending on what means the parents used to route their remittances to Applicant's wife and brother, their fund transfers could be tracked and monitored by Iranian banking authorities, and ultimately traced to Applicant's wife and her brother. As Iran moves ever closer to a barter-based economy under the weight of U.S.-led sanctions, Applicant's in-laws could find their financial resources strained or depleted. Should this occur, added financial stress could be imposed on Applicant and his wife to help her parents.

Were either of Applicant's wife's parents to be placed in a hostage situation, Applicant could be subject to conflicts over ensuring his family's well being and protecting classified information. For this reason, DC 7(b), "connection to a foreign

person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information," is applicable to the facts of this case.

Neither of Applicant's in-laws in Iran have any history to date of being subjected to any coercion or influence. These historical antecedents do limit the severity of a conflict situation. However, the absence of any past coercive measures taken by Iranian authorities does not absolve Applicant from coercive risks in the future given Iran's rich history of hostage taking, nuclear development, past collection practices, and abusive measures taken against its own citizens.

Considering Applicant's explanations about his wife's strong relationships with her parents, her regular contacts with her parents residing in Iran, and her financial interests in the townhouse investment she undertook for her parents, risks of undue foreign influence on Applicant, his wife, and her parents residing in Iran cannot be safely discounted. Applicant's wife's contacts with her parents are significant and ongoing (though quite understandable), and are clearly of the magnitude that could make them subject to a heightened security risk of pressure or compromise under Guideline B.

The AGs governing security clearances do not dictate *per se* results or mandate particular outcomes for any chosen set of guidelines covering risks of foreign influence. What is considered to be an acceptable risk in one foreign country may not be in another. While foreign influence cases must by practical necessity be weighed on a case-by-case basis, guidelines are available for referencing. Personnel security assessments necessarily embrace similar risk assessments under the new AGs for assessing foreign influence risks and concerns associated with the individual's having family abroad, which include both common sense assessments of country risks and information available from public sources. In weighing the heightened risks associated with a particular country, the geopolitical aims and policies of the particular foreign regime involved do matter.

As demonstrated, Iran has long been known to be a repressive country, whose state-sponsored authorities have committed numerous, serious human rights abuses in recent years, and shown little respect for the rule of law. The U.S. has no diplomatic relations with Iran. Iran remains a country on the State Department's state terrorist list, and one with a known history of hostage taking and human rights abuses of wide magnitude and scope. Iran is consistently characterized as a country hostile to American political and security interests since the 1979 fall of the Shah of Iran and ensuing establishment of an Islamic republic with close ties and support to non-state terrorist groups. Based on reported terrorist activities in the country and in other countries in the region with support links to Iran, its dismal human rights record, its developing nuclear program, and its active collection activities, Iran cannot be deemed to provide an acceptable political and security environment for managing hostage risks. Without such assurances, no reasonable conclusions can be reached that Applicant's wife and parents are not in a position to be exploited by Iranian authorities.

Considering Applicant's case-specific circumstances, MC 8(a), "the nature of the relationships with foreign persons, the country in which these persons are located, or the persons or activities of these persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign a foreign individual, group, organization, or government and the interests of the U.S." is not available to Applicant. Neither Applicant nor his wife's parents residing in Iran can be characterized as sufficiently insulated from potential pressures and influence from the Iranian government and its military and intelligence officials to warrant application of this mitigating condition.

Of some benefit to Applicant is MC 8(b), "there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest." Applicant's demonstrated loyalty and commitment to the United States and its institutions and values and the absence of any history of coercive measures taken against any of his wife's family are well supported.

Applicant's demonstrated loyalty, patriotism, and professional commitments to the United States, while considerable, are not enough to neutralize all potential conflicts that are implicit in his relationships with his spouse and his wife's parents. MC 8(c) "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create risk for foreign influence or exploitation," has some applicability based on Applicant's own infrequent contacts with his wife's parents residing in Iran. Application of MC 8(c) is necessarily very limited, though, because of the frequent communications his wife maintains with her parents (particularly her mother) residing in Iran.

One other mitigating condition has mixed application to Applicant's situation. MC 8(e), "the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country," has some prospective value based on Applicant's assurances of reporting any improper contacts to his employer and his long possession of a security clearance without any reported incidents. Historically, though, the Appeal Board has accorded very little weight to stated intentions to take corrective steps in a hypothetical set of circumstances, absent record evidence that an applicant has acted similarly under comparable circumstances. See ISCR Case No. 07-00029, at 4 (App. Bd. Dec. 7, 2007); ISCR Case No. 06-24575, at 4 (App. Bd. Nov. 9, 2007).

Given that Iran remains a hostile country with no diplomatic relations with the U.S., and one that lacks a secure infrastructure and track record for respecting human rights and the rule of law, the risk of a pressure or influence situation involving an immediate or extended family member of Applicant's cannot be minimized. Iran's strategic location and political character, his wife's investment relationship and regular contacts with her parents, and the residency of her parents in Iran, all combine to create

security concerns over risks of direct or indirect pressure or influence of a family member of Applicant's by Iranian authorities.

Whole person assessment is difficult at best without any endorsements or personnel assessments, or input from his spouse about her parents' status. Without more evidentiary support from Applicant, the evidence in the record does not permit mitigation of his exposure to potential painful choices over ensuring the safety and well being of his wife's parents and protecting U.S. national security interests. To his credit, he has a long history of service in the defense industry with continuous security clearances. Applicant has demonstrated strong loyalties and commitments to U.S. core values. His length of service in the defense industry and his promises to report any inappropriate contacts from Iranian sources are encouraging indicators he cannot be pressured or coerced.

After carefully considering Applicant's wife's connections with her parents in Iran and the risks of Applicant's submission to Iranian pressures should his wife or parents be pressured or coerced by Iranian authorities in the foreseeable future, the weighted risks of a compromise remain too substantial to become manageable ones at this time under a whole-person assessment of all of the critical circumstances considered in this case.

Overall, any potential security concerns attributable to Applicant's wife's relations with her parents residing in Iran are insufficiently mitigated to permit safe predictive judgments about Applicant's ability to withstand risks of undue influence attributable to his wife's familial relationships with her parents in Iran. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraph 1.a of Guideline B.

### **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE B: (FOREIGN INFLUENCE):	AGAINST APPLICANT
Sub-para. 1.a:	Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge



